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Supreme Court, U.S.
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IN THE SUPREME COURT
OF THE UNITED STATES
OF AMERICA

October Term, 1993

WOODROW W. WILLIAMS, JR. AND
GERALDINE WILLIAMS

Petitioners

vs.

JAMES C. STEWART
PERSONAL REPRESENTATIVE OF THE
ESTATE OF JOHANNA STEWART

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MARYLAND

PETITION FOR WRIT OF CERTIORARI

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Pro Se

March 17, 1994

53pp

QUESTIONS PRESENTED FOR REVIEW:

1. Is a decision on the merits rendered by a United States Bankruptcy Court determining the invalidity of a claim against a Debtor *res judicata* in a subsequent proceeding on the same claim between the same parties?

2. Assuming *arguendo* that the decision by the United States Bankruptcy Court on the claim is *res judicata*, does the subsequent dismissal of the Debtor's bankruptcy proceeding in which the adjudication was made vacate the decision on the claim?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.....	i
TABLE OF AUTHORITIES.....	iii
STATEMENT OF JURISDICTION AND REFERENCE TO OPINIONS.....	1
STATEMENT OF THE CASE.....	2
WHY CERTIORARI SHOULD BE GRANTED.....	7
CONCLUSION.....	11

TABLE OF AUTHORITIES CITED

Page

11 U.S.C.§349..... 7,10,

28 U.S.C. §1257(a)..... 1

Bankruptcy Rule 9024..... 1,5,6,

Rule 60(b)
Federal Rules of Civil Procedure. 6,9

In re Saco Local Development C.,
711 F.2d 441 (1st Cir. 1983)..... 9

Williams v. Stewart
631 A.2d 717, 97 Md.App. 620..... 1,4

INDEX TO EXHIBITS

EXHIBIT A	11 U.S.C. §349, Bankruptcy Rule 9024, Rule 60(b) Fed. Rules of Civil Procedure
EXHIBIT B	Order of the Court of Appeals of Maryland denying writ of certiorari to the Maryland Court of Special Appeals dated December 17, 1993;
	Reported Opinion of the Court of Special Appeals of Maryland in the case of *Williams v. Stewart*, 631 A. 2d 517, 97 Md.App. 620 (1993);
	Motion for Appropriate Relief filed with the Circuit Court for Prince George's County, Maryland;
	Answer to Motion for Appropriate Relief filed with the Circuit Court of Prince George's County, Maryland;

Motion to Dismiss
filed with the
Circuit Court for
Prince George's
County, Maryland;

Order Granting
Reconsideration
and Sustaining
Objection to the
Claim of Estate of
Johanna L. Stewart
Bankruptcy Court
for the District
of Maryland, dated
August 7, 1990;

STATEMENT OF JURISDICTION AND REFERENCE TO OPINIONS

This is an appeal from the decision of the Court of Appeals of Maryland dated December 17, 1993, denying the Petitioners' Petition for Writ of Certiorari for that Court to review a decision made by the Court of Special Appeals of Maryland reported as *Williams v. Stewart,* 631 A.2d 517, 97 Md.App. 620 (1993).

Jurisdiction of this Court is based upon the provisions of 28 USC §1257(a) in that the decision by the Court of Appeals of Maryland represents a final decision by the highest court of the State of Maryland and involves the adjudication of the claim of the Petitioners under the Bankruptcy laws of the United States, namely, under the provisions of 11 U.S.C. §349; and United States Bankruptcy Rule 9024; and Federal Rules of Civil Procedure, Rule 60(b).

STATEMENT OF THE CASE

On September 17, 1985, the Plaintiff, Johanna Stewart, filed suit in the Circuit Court for Prince George's County against Woodrow W. Williams, Jr., Geraldine Williams seeking to recover the sum of $28,900.00, that she had allegedly lent to Mr. and Mrs. Williams. On January 12, 1985, Woodrow W. Williams, filed for protection under the provisions of Chapter 13 of the United States Bankruptcy Code. Suggestion of bankruptcy was not filed with the Circuit Court until February 19, 1985. In the meanwhile the Circuit Court in ignorance of the bankruptcy filing by Mr. Williams entered judgment in favor of Johanna Stewart against both Mr. and Mrs. Williams on February 13, 1987. When the Court learned the fact of Mr. Williams prior bankruptcy, it vacated the judgment on April 10, 1987.

Subsequently Mrs. Williams filed a Chapter 11 bankruptcy and her case was eventually consolidated with her husband's bankruptcy case. Mrs. Stewart filed her claim against the Williams with the U.S. Bankruptcy Court. The Williams disputed her claim. On July 19, 1990, the United States Bankruptcy Court after a hearing on the merits sustained Mr. and Mrs. Williams objection to the Stewart claim. No appeal was filed by Mrs. Stewart to this adjudication.

On September 19, 1991, the United States Bankruptcy Court dismissed the Williams' bankruptcy case due to their failure to file an acceptable Disclosure Statement and Plan of Reorganization. On March 30, 1992, the Plaintiff filed a Motion for Appropriate Relief asking the Circuit Court of Prince George's County to reinstate the February 13, 1987, judgment against the Williams. The Williams responded by filing a Motion to

Dismiss and/or for Summary Judgment in their favor based upon the claim that the prior decision by the U.S. Bankruptcy Court adverse to the Stewart claim was *res judicata*. They also filed an Answer to the Stewart Motion alleging substantially the same grounds. i.e. *res judicata* When the case came before the Court for trial counsel for the Williams moved to dismiss the Stewart claim on the grounds of *res judicata*. The trial court overruled all of the Williams' motions to dismiss on the ground of *res judicata*, allowed the case to go to trial and entered judgment against them in the amount of $24,700.00, on the Stewart claim.

The Petitioners filed an appeal to the Court of Special Appeals of Maryland and its mandate was issued on October 5, 1993, in a decision reported as *Williams v. Stewart*, 631 A.2d 517, 97 Md.App. 620 (1993), which denied the Petitioners'

appeal. A petition for certiorari was filed with the Court of Appeals of Maryland which denied the writ on December 17, 1993.

The Petitioners have consistently raised the federal question of the legal effect of a ruling by the U.S. Bankruptcy Court in all phases of this proceeding. In their answer to the Plaintiff's claim; in both a written and oral motion at trial; and in the appellate courts of Maryland.

The Petitioners submit that the Maryland Courts misconstrued the law relating to the finality of decisions by the U. S. Bankruptcy Court. In its opinion the Court of Special Appeals of Maryland holds that despite the fact that bankruptcy court decisions relating to claims against the estate are immediately appealable they are not "final judgments". In support of its opinion the Court of Special Appeals of Maryland misapplied

Bankruptcy Rule 9024 which provides in substance that the bankruptcy court can reconsider a decision allowing or disallowing a claim beyond the one year limitation for review provided by F.R.C.P. 60(b). The Court of Special Appeals of Maryland in its decision failed to give an effect to the provision of Rule 9024 which limited its effect to orders "entered without a contest". Furthermore, it also overlooked the requirement that any reconsideration of a decision by a bankruptcy court must be for cause.

The Maryland courts held that the mere fact that a bankruptcy court has the power to reconsider its decisions makes them not final judgments. It is submitted that by this test no judgment rendered by any court could ever be considered "final" since most courts rules provide that a party may file a motion "at any time" and seek the courts revisory power over judgments in the case of

"fraud, mistake or irregularity." *i.e.* for cause.

The Maryland Courts also misconstrued §349 of the Bankruptcy Code which sets forth the specific decisions and actions of a bankruptcy court that are undone by a dismissal of a debtor's case.

The Petitioners further submit that the issues raised in this case will almost certainly have application to a large number of similar cases in the future and it is important that the law be clear with respect to the issues herein.

WHY CERTIORARI SHOULD BE GRANTED

This petition provides the Court with the opportunity to resolve the important question of the preclusive effect of a decision on a claim made by a United States Bankruptcy Court. It seems clear given the fact that Congress made such decisions immediately appealable it must have intended that they would have pre-

clusive effect. If not, what is the effect of not filing an appeal? If the Court of Special Appeals of Maryland is correct, a party aggrieved by an adverse decision by the Bankruptcy Court on a claim loses nothing by not filing an appeal. The aggrieved party can always hope that (a) the Court will reconsider its decision; or (b) the case will eventually be dismissed. If the aggrieved party files a timely appeal he runs the risk of the decision being affirmed and thereby being entitled to preclusive effect. If this is the law we must suppose that Congress intended to reverse the normal order of judicial procedure where the party who chooses not to appeal an adverse decision loses the right to question it later, except for certain specified reasons which are not here in issue. It is submitted that Congress clearly intended by making decisions of Bankruptcy Courts regarding claims imme-

diately appealable that such decisions were to have preclusive effect unless reversed on appeal, or reconsidered by the Court under the usual provisions of Rule 60, F.R.C.P.

The few decided cases that address this issue seem to conflict with the decision of the Maryland courts. The First Circuit Court of Appeals held *In re Saco Local Development Co.*, 711 F.2d 441 (1st Cir. 1983), that disputes as to claims were separate proceedings and that "Congress has long provided that orders in bankruptcy cases may be immediately appealed if they finally dispose of discrete disputes within the larger case--and in particular, it has long provided that orders *finally* settling creditors' claims are separately appealable." This is especially so in an adversary proceeding where the very purpose of the proceeding is to determine the dispute.

It is further submitted that the 11 U.S.C. §349 limits the effect of the dismissal of a case under the Bankruptcy Code to those portions of the bankruptcy proceedings specified therein; and that there is absolutely no basis for the holding by the Maryland courts that a dismissal vacates all orders entered in the proceeding. It is apparent that if Congress had intended that result it would have clearly said so and not relied upon judicial interpretation to read into the statute a conclusion not apparent upon its face.

It is submitted that the concept of "finality" of Bankruptcy Court judgments in adversary proceedings is a federal question that should be decided by this Court. Bankruptcy litigation concerning claims can be both expensive and time consuming for the parties involved as well as the courts. It is hardly reason-

able to suppose that a voluntary debtor who is unsuccessful in resisting the claims of creditors in his bankruptcy proceeding should have the power to force relitigation of all claims by the mere expedient of dismissing the proceeding. Similarly, it is equally unreasonable to allow an unsuccessful bankruptcy claimant, who fails to appeal an adverse decision on his claim, to have the right to relitigate the same claim if the bankruptcy was dismissed without confirmation.

CONCLUSION

As of yet there has been no definite decision by this Court of the nature and effect of bankruptcy litigation in adversary proceedings. It is submitted that the resolution of this dispute should be made by this Court; and should not be left to the courts of Maryland. Accordingly, this petition should be granted.

Respectfully submitted,

Woodrow W. Williams Jr

Woodrow W. Williams, Jr.

Geraldine Williams

Geraldine Williams
Pro Se

EXHIBIT A

APPENDIX A

11 U.S.C. §349

11 U.S.C.§349. **Effect of dismissal.**

(a) Unless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(f) of this title.

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title--

(1) reinstates--

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) revests the property of the estate in the entity in which such property was vested immediately before commencement of the case under this title.

Bankruptcy Rule 9024

RELIEF FROM JUDGMENT OR ORDER

Rule 60 F.R. Civ. P. applies in cases under the Code except that (1) a motion to reopen a case under the Code or for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest is not subject to the one year limitation prescribed in Rule 60(b), (2) a complaint to revoke a discharge in a chapter 7 liquidation case may be filed only within the time allowed by § 727(e) of the Code, and (3) a complaint to revoke an order confirming a plan may be filed only within the time allowed by § 1144 or § 1330.

Federal Rules of Civil Procedure

Rule 60. Relief From Judgment or Order

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant, not actually personally notified as provided in Title 28, U.S.C. § 1655, or to set aside a judgment for fraud upon the court. Writs of coram noblis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

EXHIBIT B

IN THE COURT OF APPEALS OF MARYLAND

PETITION DOCKET NO. 471

WOODROW WILLIAMS ET AL.

v. September Term, 1993
(No. 109, September 1993,
Court of Special Appeals)

JAMES C. STEWART, Personal Representative of the Estate of Johanna Stewart

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/S/

ROBERT C. MURPHY
Chief Judge

Date: December 17, 1993

REPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 109

September Term, 1993

WOODROW WILLIAMS, et al.

v.

JAMES C. STEWART, PERSONAL REPRESENTATIVE OF THE ESTATE OF JOHANNA STEWART

Wilner, C.J.
Moylon
Fischer,

JJ.

---

opinion by Wilner, C.J.

Filed: October 5, 1993

The issue before us is whether the Circuit Court for Prince George's County erred in reinstating a judgment against appellants. The argument is that the court was precluded by the doctrine of res judicata from taking such action. We find no merit in appellants' assertion.

Procedural History And Underlying Facts

In September, 1985, Johanna Stewart filed suit in the Circuit Court for Prince George's County against appellants, Woodrow and Geraldine Williams, for $28,900 plus interest. The claim was based on appellants' failure to repay certain loans made to them by Ms. Stewart.

On February 13, 1987, after appellants failed to appear at trial, the court entered judgment in favor of Ms. Stewart in the amount of $27,900 plus interest. The judgment reflected a credit of $1,000, which Ms. Stevart acknowledged had been paid on the indebtedness. A week later, Mr. Williams filed with the court a Suggestion of Bankruptcy, informing the court that, on January 12, 1987, he had filed a single bankruptcy petition in the U.S. Bankruptcy Court for the District of Maryland and that, by virtue of 11 U.S.C. $ 362, all proceedings against him were automatically stayed thereafter. Attached to the Suggestion was a copy of his bankruptcy petition,

filed under Chapter 13 of the Bankruptcy Coda. For whatever reason, Mr. Williams had not included Ms. Stewart in his list of creditors. On March Il, both appellants noted an appeal from the judgment, alleging in their notico of appeal that, under 11 U.S.C. $ 1301, an automatic stay was in effect with respect to both of them."

The problem was eventually brought to the attention of the judge who had entered the judgment, and, on April 13, 1987, He entered an order striking the judgment as a nullity and confirming a voluntary dismissal of appellants' appeal. It is clear that his action was based solely on the jurisdictional impediment arising from the automatic stay imposed by reason of the bankruptcy filing.

A week later, on April 20, Mrs. Williams filed for bankruptcy under Chapter Il of the Bankruptcy Code, following which her husband's case was converted to a Chapter 11 filing as well, and the two cases were consolidated in the Bankruptcy Court. In May, 1987, appellants filed with the circuit court a Notice of Reorganization Case, informing the court of Mrs. Williams's petition in bankruptcy and the consolidation of the two petitions, representing that the debt upon which Ms. Stewart's action was based "has been or will be duly scheduled in [the bankruptcy] proceedings, and asserting that a discharge would constitute a

complete release of further obligation of appellants to Ms. Stewart.

Ms. Stewart filed a claim in the bankruptcy proceeding, to which appellants filed an objection. After a hearing on that objection, which appellants did not attend, the Bankruptcy Court allowed the claim in the amount of $35,932 ($27,900 plus interest).

Although 362 of the Bankruptcy Code ordinarily stays only proceedings against the debtor, 1301 stays proceedings to collect a consumer debt from a co-debtor. A 1301 stay ends when the case is closed, dismissed, or converted to a case underChapter 7 or Il of the Bankruptcy Code.

Appellants then sought reconsideration, complaining that they had not been notified of the hearing on the claim. At a subsequent hearing, which Ms. Stewart did not attend, Mrs. Williams acknowledged borrowing only $6,000 from Ms. Stewart but Contended that the loan had been repaid, relying on the same evidence that had been before the Circuit Court for Prince George's County. She also pointed out to the Bankruptcy judge that the circuit court judgment had been stricken. In that regard, this colloquy occurred:

"THE COURT: That order got entered after a trial or what?

THE WITNESS: No, there wasn't any hearing or any trial. We had an attorney as far as I know he went up there, something happened and they got -- the other side, Johanna Stewart's attorney was able to get the order signed.

Then we had an attorney who went up there and argued in front of Judge Blackwell why it should be stricken and then Judge Blackwell signed the dismissal.

THE COURT: The second order. They can't even add, you know. They have things attached that add up to $28,900 and they only entered a judgement for $27,900.

Then attached to your motion to reconsider, which is Docket No. 152 is a copy of an order dated April 10, 1987 which you're saying strikes that February 13 order. The signatures are the same and the case number is the same, CAL85-13693 in the Circuit court for Prince George's County.

Now, after the order to strike the judgement and to dismiss the appeal that was entered on April 10, 1987 what happened in the Circuit case after that, anything?

THE WITNESS: Nothing - Nobody did anything.

THE COURT: All right. Is there anything else you want to say on that?

THE WITNESS: No.

THE COURT: Thank you. You may sit down.

(The witness was excused.)

THE COURT: I do not know. While this order attached to your motion is a xerox copy it contains all of the stamps so that I have no reason to doubt its authenticity and it certainly does strike the order on which the proof of claim is based and I'm bound by the rulings in Prince George's County as to the validity of the claim.

Consequently, I will grant your motion to reconsider and I will deny or sustain your objection to the proof of claim. I am at a loss as to how a party could continue to maintain the validity of the claim in the face of a judgement that struck it but that seems to be what happened and there's no -- out of choice, there's no one here to dispute that so we start on that basis."

Nothing more transpired with respect to the claim during the bankruptcy proceedings. The bankruptcy case ended on October 10, 1991, when the Bankruptcy Court entered an order dismissing the petitions and lifting the automatic stays. We are told by appellants that the dismissal was due to their failure to file an acceptable disclosure statement and plan of reorganization.

On March 9, 1992, Ms. Stewart filed a motion in the circuit court seeking reinstatement of her judgment. She pointed out that the initial judgment had been stricken because of Mr. Williams's bankruptcy, that the bankruptcy cases had been

terminated without the debt being discharged, and, therefore, that the automatic stay had also terminated. Appellants responded initially with an answer in which they alleged that the Bankruptcy Court order was on appeal and that the automatic stays were still in effect. They followed up in April, 1992 with a motion to dismiss or, in the alternative, for summary judgment, asserting that the matter in issue had been litigated before the Bankruptcy Court and that further litigation was barred by res judicata.

In November, 1992, after a hearing at which Mrs. Williams testified, the Court rejected the res judicata defense and reentered judgment for the plaintiff in the amount of $24,700 plus interest, giving appellants credit for Certain additional payments. In this appeal, they press the single question of whether "the decision of the United States Bankruptcy Court sustaining the appellants' objection on the merits to the appellee's claim was res judicata and a bar to a subsequent proceeding before the circuit court involving the same claim and the same parties."

Discussion

In a nutshell, the doctrine of rcs judicata means that "a final and valid judgment rendered in one proceeding between two parties operates as a bar in a second proceeding between them on all matters

that have been or could have been decided in the original litigation, where the second proceeding involves the same subject matter as the first cause of action." Cook v. State, 281 Md. 665, 668, cert. denied, 439 U.S. 839 (1978). In Cicala v. Disability Review Bd., 288 Md. 254, 263 (1980), the Court held that "the elements required for the application of the principles of res judicata are that the issue determined in a previous proceeding be identical to that presented in a subsequent proceeding, that the parties in the successive proceedings be the same, and that there be a final Judgment of a court on the merits in the previous proceeding."

We are informed that the Bankruptcy Court order dismissing the petitions was affirmed by the U.S. District Court.

For purposes of this case, we shall assume that the parties in the circuit court proceeding to reinstate the judgment were the same as those before the Bankruptcy Court, that the issue presented to the circuit court - the validity of Mr. Stewart's claim against appellants - was identical to that considered and ruled upon by the Bankruptcy Court, and that the bankruptcy proceeding was a previous or prior proceeding. The fallacy in appellants' argument lies in the fact that the issue was not finally decided by the Bankruptcy Court.

Appellants' position, as more carefully elucidated at oral argument, is that the disallowance of the claim by the Bankruptcy Court constituted a final appealable judgment with respect to that claim and that that judgment, from which no timely appeal was taken, survived the dismissal of the bankruptcy case. They cite to us Bankruptcy Rule 9024, which generally makes Fed. R. Civ. P. 60 applicable to bankruptcy cases except that "a motion to reopen a case under the Code or for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest is not subject to the one year limitation prescribed in Rule 60(b).

Federal Rule 60 is tho analog to Md. Rule 2-535. It permits a Federal court to provide relief from a judgment, order, or proceeding for certain specified reasons, some of which (mistake, newly discovered evidence, and fraud) must be asserted within one year after the judgment, order, or proceeding was entered or taken. The point made by appellants is that, by invoking this Rule and applying it specifically to orders allowing or disallowing claims, Bankruptcy Rule 9024 in effect confirms that those orders are final judgments and therefore Constitute rcs judicata.

The consideration of creditors' claims is dealt with in 501 and 502 of the Bankruptcy Code.

Section 502(j) provides expressly that a claim that has been allowed may be reconsidered by the Bankruptcy Court for cause. Bankruptcy Rule 3008 expands that authority to permit the court, on motion of a party in interest, to reconsider an order allowing or disallowing a claim. Although no specific time limit for such reconsideration is set by the statute, it seems clear that, absent some unusual circumstance that would make a reconsideration late in the administration inequitable, the authority extends at least until the case is closed. See 3 Collier on Bankruptcy 502.10 (15 ed. 1993); In re, Jephunneh Lawrence & Associates Chartered, 63 B.R. 318 (Bankr. D.D.C. 1986). That alone indicates that an order allowing or disallowing a claim is interlocutory in nature. Indeed, it is a provision not unlike Md. Rule 2-602(a), which makes clear that an Order adjudicating fewer than all of the claims in an action is not a final judgment, does not terminate the action as to any of the Claims, and is subject to revision at any time before entry of a judgment that does adjudicate all claims against all parties.

The Federal courts have applied the same principle through Fed. R. Civ. p. 54. Thus, it has been held that interlocutory orders are not subject to the restrictions of Rule 60(b) "but rather are left subject to the complete power of the court

rendering them to afford such relief from them as justice requires." In rc MMS Builders, Inc., Inr., 101 B.R. 426, 430 (D.N.J. 1989), quoting Advisory Committee Notes to Rule 60(b). In Indemnity Ins. Co. v. Reisley, 153 F.2d 296 (2d Cir.), ccrt. denied, 328 U.S. 857 (1946), the Court held specifically that Rule 60(b) had no application to an order directing payment of a claim until such time as the bankruptcy proceeing was terminated. At 299, the Court, on a petition for rehearing, concluded that the Rule was not applicable "because it relates only to a final order; and no order in a bankruptcy proceeding is final (in the sense that it cannot be reopened) until the proceeding has been terminated."' (Footnote omitted.)

The implication of Rule 60(b) by Bankruptcy Rule 9024 has meaning, but not that ascribed by appellants. It would permit a party to seek relief from an order allowing or disallowing a claim after the proceeding has beenl terminated, subject to the applicable restrictions in Rule 60(b). Indeed, at that point, relief would ordinarily be available only through Rule 60, for the broader revisory power of the Bankruptcy Court would have vanished.

In re Saco Local Development Co., 711 F.2d 441 (1st Cir. 1983), cited by appellee but now relied upon by appellants, does not direct any different conclusion. The Court there held that disputes over

individual claims in bankruptcy were to be vieved as separate proceedings and that Congress intended to permit immediate appeals from orders resolving those disputes, before final resolution of the entire bankruptcy case. At 444, it noted that "Congress has long provided that orders in bankruptcy cases may be immediately appealed if they finally dispose of discrete disputes within the larger case - and in particular, it has long provided that orders finally settling creditors' claims are separately appealable.

It is evident from the Court's discussion that it was looking at "finality" in the context of appealability; it never mentioned, because it was not relevant, the ability of the Bankruptcy Court to revise its order prior to termination of the case. Nor did that case involve the situation that we have here- where the petition was dismissed without discharge or confirmation of a plan. In short, Saco merely confirms that, under the Bankruptcy Code, orders that otherwise would be regarded as interlocutory are immediately appealable. That does not, of itself, give them preclusive effect prior to termination of the case or affirmance on appeal.

The interlocutory, and therefore non-final, nature of the allowance or disallowance of a claim is reinforced by 349 of the Bankruptcy Code. That section, in essence, provides that, unless the

Bankruptcy Court orders otherwise, the dismissal of a case vacates orders entered and decisions made during the pendency of the case. The basic purpose of 349, as expressed in both the House and Senate Reports accompanying the legislation (H.R. Rep. No. 595, 95th Cong., 1st Sess. 338 (1977); Sen. Rep. No. 95-989, 95th Cong., 2d Sess. 48 (1978)), is "to undo the bankruptcy case, as far as practicable, and to restore all property rights to the position in which they were found at the commencement of the case."

In sharp contrast to the confirmation of a reorganization plan under Chapter 11 of the Bankruptcy Code, which does have preclusive effect, see, e.g., Sure-Snap Cob. v. State Street Bank and Trust Co., 948 F.2d 869 (2d Cir. 1991); Republic Supply Co. v.Shoal, 815 F.2d 1046 (5th Cir. 1987); In re Chattannoga Wholesale Antiques, Inc., 930 F.2d 458 (6th Cir. 1991), a dismissal, which adjudicates nothing other, perhaps, than the grounds relied on for the dismissal, can have no such effect. Cf. In re De Jesus Saez, 721 F.2d 848 (1st Cir. 1983); In re Case, 27 B.R. 844 (Bankr. S.D. 1983). Accordingly, once the Bankruptcy court dismissed appellants' cases under 1112(b) (2) without confirmation of a plan, the order disallowing deceased Ms. Stewart's claim, which had not then achieved finality in any event, was automatically vacated pursuant to 349, and Ms. Stewart (deceased)

was restored to all of the rights she possessed immediately prior to the filing of Mr. Williams's petition. The Bankruptcy Code itself, in other words, makes clear that the circuit court was not precluded from re-entering a judgment against appellants.

Judgment Affirmed

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

JOHANNA STEWART

Petitioner/Plaintiff

v. CAL85-13693

WOODROW W. WILLIAMS
and
GERALDINE J. WILLIAMS

Respondents/Defendants

MOTION FOR APPROPRIATE RELIEF
(Reinstate Judgment)

The plaintiff, the Estate of Johanna Stewart, by the personal representative and sole heir, James C. Stewart, and undersigned counsel, move this court to reinstate the judgment against the defendants in the referenced case for the reasons that follow:

1. The captioned case arises out of debt from an unpaid obligation on four notes issued by Johanna Stewart to the defendants Woodrow W. Williams, Jr. and Geraldine J. Williams on November 3, 1982, Hovember 7, 1984 and January 17, 1985.

2. James C. Stewart is the sole heir of Johanna Stewart.

3. Suit was filed on September 17, 1985 in an effort to collect the outstanding obligation.

4. On February 13, 1987, judgment was entered in favor of the plaintiff Johann L. Stewart and against the defendants Woodrow W. Williams Jr. and Geraldine J. Williams in the amount of 527,900.00 plus interest in the amount of 58,032.44 by order

signed by the Hon. Albert T. Blackwell, Jr.

5. On or about April 10, 1987 Judge Blackwell signed an order striking the judgment on the basis that one defendant, Woodrow W. Williams, Jr. had timely filed for protection under the auspices of Chapter 11 in the United States Bankruptcy Court for the District of Maryland at Rockville in case number #87-4-0093.

6. Subsequent to Judge Blackwell's order of April 10, 1987, the defendant Geraldine J. Williams also filed for protection under Chapter 11 of the Bankruptcy Code in case number #87-4-0093 by order of the Bankruptcy Court.

7. Both cases in the United States Bankruptcy Court for the District of Maryland were discharged by the Hon. E. Stephen Derby on September 16, 1991, resulting in the termination of all automatic stays imposed by 11 U.S.C.fi362(a). A copy of Judge Derby's order is attached and incorporated by reference as Exhibit "B".

8. The defendant's underlying obligations to the plaintiffs under the notes remain outstanding.

WHEREFORE: it is respectfully requested that this Court pass an order reinstating the judgment entered on February 13, 1987 in the amount of $27,900.00 plus interest of $8,032.44.

SASSCER, CLAGETT 4 BUCHER

/S/

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14803 Pratt Street
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IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

JOHANNA STEWART

Petitioner/Plaintiff

vs. CAL85-13693

WOODROW W. WILLIAMS
and
GERALDINE J. WILLIAMS

Respondents/Defendants

ANSWER TO MOTION FOR APPROPRIATE RELIEF

The Respondents, Woodrow W. Williams and Geraldine J. Williams, moves this Court to reinstate the judgment against the respondents in the above referenced case for the following reasons:

1. Attached is a copy of an Order Granting Reconsideration and Sustaining Objection to Claim of Estate of Johanna L. Stewart, signed by Federal Bankruptcy Judge, E Stephen Derby, on August 7, 1990, which precludes bringing any action against the respondents in this matter.

2. Attached also is a copy of the Order to Strike Judgement and to Dismiss the Appeal signed by Prince Georges County Circuit Court Judge Blackvell on April 13,1987.

3. The Chapter 11 Bankruptcy Proceeding has been appealed and is still in force and pending and all automatic stays imposed by Il U.S.C. 362(a) are

in force.

4. This action to reinstate judgement brought before this Honorable Court by James C. Stewart in behalf of the Estate of Johanna Stewart is made in bad faith and misrepresentation of the facts has been made to this Court.

.5. The Respondents do not have any monetary obligation to the Plaintiff.

WHEREFORE, it is respectfully requested that this Court not pass an order reinstating the judgment as there as no basis for such an order and is precluded by the Order signed by the Federal Bankruptcy Judge, E. Stephen Derby, on August 7, 1990, that the claim of Johanna Stewart, who is deceased, had been fully satisfied.

Respectfully submitted,

/S/

Woodrow W. Williams

/S/

Geraldine Williams

IN THE CIRCUIT COURT FOR PRINCE
GEORGES COUNTY, MARYLAND

JOHANNA STEWART

Petitioner/Plaintiff

vs. CAL85-13693

WOODROW W. WILLIAMS
AND
GERALDINE J. WILLIAMS

Respondents/Defendants

L I N E

Attached is a copy of the transcript of a hearing held in Federal Bankruptcy Court on July 19, 1990, more than a year before the bankruptcy case was dismissed approximately September of 1991. This hearing was held in open court and included a Phone call from the Judge's bench to Barbara Berschler, Attorney for the Estate of Johanna Stewart with Ms. Berschler stating, in open court, that she will accept the decision of the Judge and that her client, James Stewart, son of the deceased, Johanna Stewart agreed, and she (Barbara Berschler) and James Stewart decided that neither would be present in person at this hearing.

The respondent, Geraldine Williams, is a niece of the deceased Johanna Stewart.

The Order of the Federal Bankruptcy Judge is also attached showing that the Claim of the Estate of Johanna Stewart is not allowed.

No Appeal from this Order was ever filed by the Representatives of the Estate of Johanna Stewart.

Respectfully submitted,

/S/

Woodrow W. Williams

/S/

Geraldine J. Williams

DATED: October23, 1992

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the aforegoing Line was mailed, first class mail, postage prepaid, this 23rd day of October, ,1992 to:

Thomas A. McManus
14803 Pratt Street
Upper Marlboro, MD 20772

/S/

Woodrow Williams
110 Water Street
Gaithersburg, MD 2087
301-258-9592

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

JOHANNA STEWART

Plaintiff,

-vs-

Civil
Action No. CAL-13693

WOODROW W. WILLIAMS, et al.

Defendants.

MOTION TO DISMISS

COME NOW the Defendants, Woodrow W. Williams and Geraldine J. Williams, and Move to Dismiss the Plaintiff's Claim herein upon the grounds that the Plaintiff's claim has already been determined to be invalid by the United States Bankruptcy Court for the District of Maryland and is, therefore, barred by the doctrine of res judicata.

The Defendants respectfully refer the Court to the attached Points and Authorities in support of this Motion.

/S/
CHARLES V. KIRCMMAN
Attorney for Defendants
11141 Georgia Avenue
Wheaton, Maryland 20902
(301) 942-4747

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

JOHANNA STEWART

Plaintiff,

-vs- Civil Action No. CAL-13693

WOODROW W. WILLIAMS, et al.

Defendants.

DEFENDANTS' POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS

COME NOW the Defendants and support their Motion to Dismiss as follows, to wit:

FACTUAL BACKGROUND OF THE CASE

That this case was brought herein on September 17, 1985, to collect various sums of money that she claimed the Defendants had borrowed from her. On February 13, 1987, this Court entered judgment in favor of the Plaintiff in the amount of $27,900.00, together with interest thereon in the amount of $8,032.44. This Judgment was subseguently vacated by this Court on April 10, 1987, due to the fact that the Defendant, Woodrow W. Williams,Jr., had timely filed for protection under Chapter 11 of the U.S. Bankruptcy Code prior to the entry of the judgment of February 13, 1987. Subseguently the Defendant, Geraldine J. Williams, also filed for protection under Chapter 11, and both of their cases were consolidated as Case No. 87-4-0093-SD, United

States Bankruptcy Court for the District of Maryland. That the Plaintiff filed a proof of claim in the Williams' Bankruptcy proceeding. This claim was objected to by the Defendants and a hearing was set thereon. Due to a failure of the Williams to receive notice of the hearing on their objection to the Stewart claim it was at first allowed by the Bankruptcy Court due to their failure to appear. The Williams filed a Motion for Reconsideration on their Objection to the Stewart claim. The matter came before the Bankruptcy Court on July 19, 1990, for decision. The Plaintiff was represented in her claim by Barbara I. Berschler, Esguire. Ms. Berschler had filed an objection to the Williams' Motion for Reconsideration, but chose not to appear at the hearing. Judge Derby then proceeded to overrule the Stewart objection to his reconsideration of her claim and allowed the Williams to submit evidence that the claim had been paid. After a hearing Judge Derby sustained the Williams objection to the Stewart claim and entered an order to that effect on August 7, 1990. On July 9, 1991, the Bankruptcy Court dismissed the Williams' bankruptcy case due to their inability to prepare an adeguate Disclosure Statement and Plan of Reorganization.

1. The record recites that Judge Stephen Derby had his deputy call Ms. Berschler on the day of the

hearing and she stated that she was aware of the hearing "but was submitting on the pleadings and had not been authorized by her client to appear." (Record Page 5)

2. Judge Derby informed the Williams "that I will allow you, Mr. and Mrs. Williams, to prove to me that your objection is valid, that the claim was in fact paid." (Record Pages 5 - 6). The Defendants submit that the claim urged by the Plaintiff in this proceeding is the identical issue decided between the same parties by the United States Bankruptcy Court for the District of Maryland and that further proceedings in this action are barred by the doctrine of res judicata. There is no doubt that the United States Bankruptcy Court has the exclusive power to determine the validity of claims filed against those who seek its protection. Furthermore, the principles of res judicata that are applicable to other federal judicial proceedings are applicable to bankruptcy Proceedings. It is also clear that a decision of the U.S. Bankruptcy Court disallowing a claim is a "final' order for purposes of an appeal.

3. In the instant case the Plaintiff after Judge Derby's ruling disallowing its claim made no effort to file an appeal or even to ask that the Court reconsider its decision. Instead the plaintiff did nothing until it was learned that the Williams' bankruptcy case had been dismissed. The Plaintiff

has now asked this Court to rehear its claim apparently upon the theory that the dismissal of the Defendants' bankruptcy proceeding vitiates the effect of the doctrine of Res Judicata.

1. 28 U.S.C.A. 1334(b)

2. In re Eadie, Bkrtcy. Mich., 51 B.R. 890 3. 8A C.J.S. Bankruptcy 455-461

In the case of Karabetis v. City of Baltimore, 72 Md.App. 407, 530 A.2d 293 (1987) the Court of Special Appeals had occasion to consider the effect of a decision of the Baltimore City Wage Commission as a bar to further litigation concerning the issues raised therein. In affirming the issuance of a summary judgment in favor of the City by the Circuit Court of the City of Baltimore, the Court held that where the Defendant failed to appeal a final judgment against him, where the Wage Commission had jurisdiction of the parties, and where the identical issues were adjudicated then the decision of the Commission was res judicata to any further proceedings on the same claim. The bar extends not only to the matters decided but "to all matters which with propriety could have 'been litigated in the first suit".

In this case it is clear that the U.S. Bankruptcy Court had jurisdiction of both of the parties who are now before this Court. There also can be no dispute that the purpose of the hearing

held by Judge Derby on July 19, 1990, was to determine the validity of the same claim now before this Court. There can also be no dispute that Judge Derby's decision was a final decision on the merits that could have been appealed by the Plaintiff.

1. The reported decisions are unanimous in their holdings that a final decision reached by a court or tribunal having jurisdiction cannot be made the subject of collateral attack. See: Di Maio v. Lumbermens Mutual Casualty Company, 247 Md. 30, 230 A.2d 279 (1967) Johnson v. Johnson, 265 Md. 327, 289 A.2d 318 (1972);

2. Jack v. Foster Branch Homeowner's Assn. No. 1. Inc., 53 Md.App. 325, 452 A.2d 1308 (1982). No appeal was filed. There is no authority for the proposition that the mere fact that the Williams bankruptcy was subsequently dismissed removes the bar of res judijcata. A dismissal of a bankruptcy case only means that the Bankruptcy Court at that time relinquishes jurisdiction over the case. It is operative only prospectively and not retroactively.

Respectfully submitted,

/S/

CHARLES V. KIRCHMAN
Attorney for Defendants

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
AT ROCKVILLE

In re:

WOODROW W. WILLIAMS, JR. No. 8740093SD
GERALDINE WILLIAMS, Chapter 11

Debtors

ORDER GRANTING RECONSIDERATION AND SUSTAINING OBJECTION TO CLAIM OF ESTATE OF JOHANNA L. STEWART

James C. Stewart, as Personal Representative of Estate of Johanna L. Stevart, has filed an unsecured claim in this case In the amount of $35,932.14. This claim is-based on.certain notes which were the subject of a judgment entered in the Circuit Court for Prince George's County on February 13, 1987 in the amount of $35,932.14 against Debtors, Case No. CAL 85-13693. Debtors objected to the claim, but they failed to appear at the hearing on their objection. The Court concluded that the claim was prima facie valid as filed under oath, and Debtors had failed to present adverse proof to overcome its presumption of validity because of their absence. Therefore, the claim was allowed as filed.

Debtors then moved for reconsideration claiming they never received notice of the hearing and that they had conclusive proof that the claim had been paid and satisfied. The Court scheduled a hearing on the

motion for reconsideration of which claimant was notified but plaintiff declined to appear. Debtors presented proof that the claim had been fully satisfied and submitted an order of the Circuit Court for Prince George's County dated April 10, 1987 in the same case number CAL 85-13693 which struck the judgment dated February 13, 1987 as a nullity. The Court considers itself bound by the order of the State Court striking the judgment on which the claim was based. Since the Court was not aware of the order striking the judgment at the time it allowed the claim as filed, the Court finds that its order was based upon a mistake of fact which justifies reconsideration of the order allowing the claim, as weIl as a contrary ruling on the objection. For these and the other reasons stated at the hearing on July 19, 1990, it is this 7th day of August, 1990, by the United States Bankruptcy Court for the District of Maryland,

ORDERED, that Debtors' Motion for Reconsideration and to Strike Order is hereby granted; and it is further

ORDERED, that the Debtors' Objection to the Claim of the Estate of Johanna L. Stewart is sustained; and it is further

ORDERED, that the claim of the Estate of Johanna L. Stewart is not allowed in this case.

/S/
E. Stephen Derby
JUDGE

ENTERED: August 7, 1990

cc: Barbara I. Berschler, Esquire
1119 12th Street, N.W.
Washington, D.C. 20005-4632

Office of the United States Trustee
1 Metro Square
51 Monroe Street
Plaza level West
Rockville, Maryland 20850

Mr. and Mrs. Woodrow Williams, Jr.